

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2851 of 2002

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

JASHWANTLAL R. KALAL - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

MR BHARAT JANI for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 14/06/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 28th August, 2001 passed by the Labour Court, Mehsana in Reference (LCK) No. 401 of 1996, whereby the Labour Court has directed the petitioner to reinstate the respondent on his original post with continuity of service but without backwages and had further imposed penalty of reduction by five stages from his

existing salary.

1. The short facts of the case are that the respondent was working as a conductor with the petitioner Corporation since last many years. He was dismissed from the service on 17th January, 1994 on the ground of mis-appropriation of an amount of Rs.4220.60. In view of the aforesaid misconduct, he was chargesheeted and departmental inquiry was held against him.
1. It is the case of the petitioner that in the departmental inquiry, he remained present along with his representative and had admitted his guilt and had stated that he had committed the said mis-appropriation on account of some financial difficulties. Since the misconduct of the respondent was proved, he was dismissed from service vide order dated 17th January, 1994.
1. Being aggrieved by the said order of dismissal, the respondent raised industrial dispute, which was ultimately referred to the Labour Court for adjudication. The Labour Court after appreciating the material produced before it allowed the said Reference with the aforesaid direction. Hence, this petition.
1. Mr.H C Raval learned advocate appearing for the petitioner Corporation has submitted that the Labour Court has not properly appreciated the fact that the past service record of the respondent was not good since five misconducts were recorded against him. He has submitted that since the respondent had admitted that he had committed misappropriation of Rs.4220.60, the Labour Court ought not to have continued him in service.
1. I have heard the learned advocates for the respective parties and have perused the relevant material on record. Having gone through the award of the Labour Court, it appears that the Labour Court has committed error while exercising the power under Section 11-A of the I.D. Act, in view of the principle laid down by the Apex Court in the cases of **Regional Manager, Rajasthan State Road Transport Corporation v. Sohanlal reported in (2004) 8 S.C.C. 218** and in the case of **Regional Manager, U.P. SRTC, Etawah &Ors. v. flotillas &An., reported in (2003) 3 S.C.C. 605**. In my opinion, the Labor Court ought not to have exercised power under Section 11-A of the I.D. Act in view of the aforesaid decisions. However, since the respondent has served the petitioner Corporation for many years, it would be appropriate if the order of dismissal passed against the respondent is modified.
1. In the premises aforesaid, the petition is partly allowed. The order of dismissal shall be treated as if the respondent has voluntarily resigned from his service i.e. the date on which he was dismissed from the service. The respondent is directed to tender his resignation before the petitioner Corporation as if he had resigned from the service on 17th January, 1994 i.e. the date on which he was dismissed from the service within a period of one month from today. The petitioner Corporation shall pay all the retirement dues to the respondent as if the respondent had resigned from the service on 17th January, 1994 within a period of eight weeks from the date of his tendering the resignation. The impugned order of the Labour Court is accordingly modified to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as

to costs.

[K.S. JHAVERI, J.]

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